

Ordinance No.: 16-26  
Subdivision Regulation Amend. No. 08-03  
Concerning: Arts or Entertainment Use –  
Validity Period  
Revised: 1/1/08 Draft No. 3  
Introduced: June 24, 2008  
Public Hearing: July 29, 2008  
Adopted: October 7, 2008  
Effective: October 18, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Council President at the Request of the County Executive

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AN AMENDMENT to the Subdivision Regulations to:

- (1) provide for an extension of the validity period for an adequate public facilities determination for certain properties;
- (2) provide for the approval of a site plan to validate phases of a preliminary plan and project plan for certain properties under certain circumstances; and
- (3) provide for the recordation of a final record plat to validate all phases of a multi-phase preliminary plan for certain properties under certain circumstances.

By amending the following sections of Montgomery County Code Chapter 50:  
Section 50-20. Limits on issuance of building permits.  
Section 50-34. Preliminary subdivision plans—Filing and specifications.  
Section 50-35. Preliminary subdivision plan—Approval procedure.

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

**Opinion**

Subdivision Regulation Amendment (SRA) 08-03, sponsored by the District Council at the request of the County Executive, was introduced on June 24, 2008.

SRA 08-03 would extend the life of a preliminary plan approval and adequate public facilities (APF) findings for plans that transferred land or building space to the County for arts or

entertainment uses. Optional method of development projects that satisfy the special standards for arts or entertainment use in an Arts and Entertainment District would have a 10-year life from the date the County receives the land or building space. The validity period would be extended if governmental action prevents the applicant from proceeding with permits for any reason. If the applicant proposes to change a use, and the new use would have the same or lesser transportation impact as the original determination of adequate public facilities, the APF approval for the project would remain valid.

The Planning Board recommended against the approval of SRA 08-03 because granting an extended APF validity period could prevent other projects from proceeding and could create an APF capacity monopoly. Planning Staff noted that the Council most recently decreased the APF validity; SRA 08-03 would be inconsistent with that action.

A public hearing was held on July 29, 2008. Every public speaker, other than the Chairman of the Planning Board, spoke in favor of SRA 08-03. Executive staff pointed out that this provision would have applicability in three Arts and Entertainment Districts and that, given difficult economic times, the longer APF validity period would be an incentive to encourage projects that would give land to the County to create cultural opportunities in the Arts and Entertainment Districts. The County Executive indicated that, in addition to creating the ability to get arts and entertainment land at no monetary charge in Silver Spring, this tool will help to create economic revitalization opportunities in Wheaton. Speakers from the community observed that the SRA would allow the Executive to implement plans to have Live Nation locate on property currently owned by the Lee Development Group. The Lee Development Group testified that the extended APF validity period was a fair exchange for conveying land first instead of last; if they donate land today, then their development should be held to today's rules. Governor O'Malley submitted testimony in support of SRA 08-03 and a music hall in Silver Spring without any comment on the details of SRA 08-03.

On September 29, 2008 the Committee recommended approval of SRA 08-03 with amendments. The Committee (3-0) recommended having the adequate public facilities validity period for projects with accepted arts or entertainment uses run from the date of project plan approval and last for 18 years. The Committee believed that this was a straightforward means of accomplishing the objectives of SRA 08-03. The Committee also recommended deleting the provisions for extending the APF validity period.

The District Council reviewed Subdivision Regulation Amendment No. 08-03 at a worksession held on October 7, 2008. The Council agreed that SRA 08-03 will encourage the creation of arts and entertainment opportunities by providing property to the County and is a useful tool to assist with economic revitalization. The Council disagreed with the Committee's recommended amendments to SRA 08-03. The Council believed that SRA 08-03 as introduced better served the public interest. For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 08-03 will be approved as introduced.

*Ordinance*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:*

1       **Sec. 1., Sections 50-20, 50-34 and 50-35 are amended as follows:**

2       **50-20. Limits on issuance of building permits.**

3       \*       \*       \*

4               (c)   (3)   A determination of adequate public facilities made under this  
5                               Chapter is timely and remains valid:

6       \*       \*       \*

7                       (D)   (i)   For 10 years after the date of the conveyance of land  
8                               to the County, or possession of building space by the  
9                               County for an arts or entertainment use, under a  
10                              preliminary plan for an optional method of  
11                              development project approved under Section 59-C-  
12                              6.2356.

13                      (ii)   The Board must grant an application to extend the  
14                              validity period established under (D)(i) of this  
15                              subsection for an additional 5 years if:

16                              a.   at least 20% of the approved  
17                                      development, excluding the arts or  
18                                      entertainment use, either separately or in  
19                                      combination:

20                                      1.   has been built;

21                                      2.   is under construction;

3. is subject to building permits that have  
been issued;

4. is subject to a valid lease; or

5. has had a site plan approved under  
Section 59-D-3; or

b. at any time during the 24 months before the application for extension being filed, the vacancy rate for class A office buildings in the Central Business District in which the project is located reaches 10% for direct and sublet space combined, as measured by CoStar or a similar commercial Multiple Listings Service benchmark; or

c. the applicant makes a binding commitment to the County to make a contribution, as compensation for potential loss of property tax revenues, an amount equal to \$2 for each square foot of approved taxable improvements and thereafter makes the contribution within 6 months of final approval of the extension.

(iii) The validity period is extended for the duration of any government imposed moratorium, or other government action resulting in a similar effect, that would prevent the applicant from:

a. completing the regulatory approvals  
necessary for obtaining a building permit;  
 or

b. obtaining a building permit.

(iv) If the applicant proposes to change a use in a project  
that is approved under Section 59-C-6.2356 and the  
new use would have the same or lesser impact as the  
original determination of adequate public facilities,  
the adequate public facilities approval for the project  
remains valid.

\* \* \*

**50-34. Preliminary subdivision plans—Filing and specifications.**

\* \* \*

(h) Staging schedule for land containing an arts or entertainment use as a  
public use space. If a phasing plan for a preliminary plan of  
subdivision includes land or building space that the County has accepted  
for an arts or entertainment use under Section 59-C-6.2356, approval of  
a site plan under Section 59-D-3 for the phase containing that land or  
building space validates all remaining phases of the preliminary plan  
and the project plan for the purpose of Section 59-D-2.7(b).

[(h)] (i) \* \* \*

[(i)] (j) \* \* \*

[(j)] (k) \* \* \*

**Sec. 50-35. Preliminary subdivision plan—Approval procedure.**

\* \* \*

(h) *Duration of Validity Period and Actions Required to Validate the Plan.*

\* \* \*

(2) *Duration of Validity Period.*

\* \* \*

(D) An approved preliminary plan for a multi-phase project that includes land or building space to be conveyed or dedicated to the County for an arts or entertainment use under Section 59-C-6.2356 is validated for all phases of the approved preliminary plan by recordation of a final record plat for all property in the phase containing the land or building space to be conveyed or dedicated to the County for an arts or entertainment use if recordation occurs within 5 years after the final approval of the preliminary plan. After approval, an amendment or modification to the phasing plan or the preliminary plan will not affect the validations, if the requirements of this subsection have otherwise been met.

**Sec. 2. . . . Effective Date.**

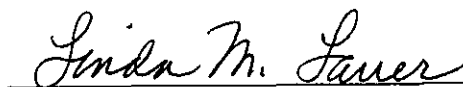
This Ordinance takes effect on the date of [[Council adoption]] the County Executive's approval.

*Approved:*

  
Isiah Leggett, County Executive

Oct 17, 2008  
Date

*This is a correct copy of Council action.*

  
Linda M. Lauer, Clerk of the Council

Oct 20, 2008  
Date